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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/281,813	03/31/1999	STEPHEN PALM	P17243	7668

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EXAMINER

NGUYEN, DUNG X

ART UNIT PAPER NUMBER

2631

DATE MAILED: 12/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/281,813

Applicant(s)

PALM, STEPHEN

Examiner

Dung X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2, 4, 5, 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 4, 5, 9 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Arguments***

1. Applicant's arguments filed on October 28, 2002 have been fully considered but are not persuasive.

According to a feature of applicant's arguments, the carriers issued by the initiating communication device include first digital information that represents different communication device capabilities that can be handles by the plurality of initiating communication devices, and the carriers issued by the responding device include second digital information representing different communication device capabilities (page 4 of the Amendment filed on October 28, 2002). Gatherer et al. discloses carriers exchanging between initiating communication device and a responding device (column 17, line 24 to column 19, line 31). The transmitted carriers including digital information representing different communication device capabilities (column 17, lines 24 – 29 and column 18, lines 23 – 34) and the received carriers including digital information representing different communication device capabilities (column 19, lines 4 – 31).

Based on above rationale, it is believed that the claimed limitations are met by the reference of Gatherer et al. Therefore; the rejections made in the Office Action filed on July 29, 2002 are still maintained.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

*A person shall be entitled to a patent unless –*

*(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.*

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. **Claims 2, 4, 5, 9, and 10 are rejected** under 35 U.S.C. 102(e) as being anticipated by Gatherer et al. (U.S. Patent No. 6,044,107).

Regarding claim 2, Gatherer et al. discloses that a DSL system can also be implemented with multiple carriers using the DMT line code (column 17, lines 24 – 29 and column 18, lines 24 – 25), comprising:

- Transmitting a negotiation protocol (carriers including first digital information representing different communication device capabilities) from calling modem, which has the capability of implementing either CAP or DMT line codes (column 18, line 50 to column 19, line 6);
- Receiving a negotiation protocol (second digital information representing different communication device capabilities) from answering modem, which has the capability of implementing either CAP or DMT line codes (column 18, line 5 to column 19, line 31);
- Selecting an appropriate communication device (based on usage tariff), in accordance with the responding communication device, to establish a communication link (column 18, line 63 to column 19, line 6), wherein the transmitted carriers contain data related to a usable allocation (column 3, lines 10 – 17).

Regarding claim 4, Gatherer et al. discloses that a DSL system can also be implemented with multiple carriers using the DMT line code (column 18, lines 24 – 25), comprising:

- Transmitting a negotiation protocol (carriers including first digital information representing different communication device capabilities) from calling modem, which has the capability of implementing either CAP or DMT line codes (column 18, line 50 to column 19, line 6);

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- Receiving a negotiation protocol (second digital information representing different communication device capabilities) from answering modem, which has the capability of implementing either CAP or DMT line codes (column 18, line 5 to column 19, line 31);
- Selecting an appropriate communication device (based on usage tariff), in accordance with the responding communication device, to establish a communication link (column 18, line 63 to column 19, line 6), wherein the negotiation data transmitting section transmits the carriers in accordance with neighboring receiving systems (column 8, lines 12 – 28 and column 19, lines 38 – 45).

Regarding claim 5, Gatherer et al. also discloses that the transmitting of transmission characteristics of the carriers comprises re-configuring the carriers during a transmission operation in order to minimize interference with the neighboring receiving stations (column 19, lines 38 – 45, and column 8, lines 12 – 28).

Regarding claim 9, Gatherer et al. discloses that a DSL system can also be implemented with multiple carriers using the DMT line code (column 18, lines 24 – 25), comprising:

- Transmitting carriers according to a predefined time sequence to a responding communication device (column 18, line 50 to column 19, line 22);
- Receiving carriers according to a predefined time sequence from a responding communication device (column 18, line 50 to column 19, line 22);
- Selecting an appropriate communication device (based on usage tariff), in accordance with the responding communication device, to establish a communication link (column 18, line 63 to column 19, line 6), wherein the negotiation data transmitting section transmits the carriers in accordance with neighboring receiving systems (column 8, lines 12 – 28 and column 19, lines 38 - 45).

Regarding claim 10, Gatherer et al. also discloses that the transmitting of transmission characteristics of the carriers comprises re-configuring the carriers during a transmission operation in order to minimize interference (line condition change) with the neighboring receiving stations (column 19, lines 38 – 45 and column 8, lines 12 – 28).

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung X. Nguyen whose telephone number is (703) 305-4892. The examiner can normally be reached on Monday through Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Chi Pham can be reached on (703) 305-4378. The fax phone numbers for this group is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305- 3800.

DXN

December 4, 2002